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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 GENESIS WILSON, et al.,

4 Plaintiffs,

5 v.

10 Cv. 2709 (PGG)

6 PASQUALE'S DAMARINO'S, INC.,
7 et al.,

8 Defendants.

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9
10 July 20, 2012
3:50 p.m.

11 Before:

12 HON. PAUL G. GARDEPHE

13 District Judge

14 APPEARANCES

15 ROBERT WISNIEWSKI
16 Attorney for Plaintiffs

17 CAVANAGH & ASSOCIATES, P.C.
18 Attorneys for Defendants

19 BY: GLENN L. CAVANAGH
20 JARRED S. FREEMAN

21 Also present:
22 ANDREW C. RISOLI
23 ANDREA RISOLI
24
25

C7K8GENC1

(Case called)

THE DEPUTY CLERK: Is the plaintiff ready?

MR. WISNIEWSKI: Plaintiff is ready. Robert Wisniewski for all plaintiffs.

THE DEPUTY CLERK: Defendants ready?

MR. ANDREW RISOLI: Andrew C. Risoli, 488 White Plains Road, Eastchester, New York.

MR. CAVANAGH: Glenn Cavanagh, Cavanagh & Associates.

MR. FREEMAN: Jarred Freeman, Cavanagh & Associates.

THE COURT: This matter is on my calendar for purposes of considering the plaintiffs' application for a default judgment.

This case was filed on March 26, 2010. The defendants have repeatedly refused to pay their lawyers, which has led to repeated changes in counsel and a complete disruption of proceedings in this case.

The first lawyer was Adam Breud. He was terminated on January 3, 2011 by defendants. Mr. Breud withdrew because of a fee dispute.

Robert Popescu was the second attorney. His services were terminated on March 11, 2011. The reasons why Mr. Popescu withdrew are not clear from the record.

Mr. Cavanagh appeared at an April 5, 2011 conference on behalf of all defendants. I made it crystal clear at that time that there would be no further substitutions of counsel.

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1 At the April 5, 2011 conference, I said the following: "I
2 don't want any further delay in the case. And, Mr. Cavanagh,
3 you should instruct your clients that I have no more tolerance
4 for jockeying around here. We are on our third set of lawyers.
5 It has been incredibly disruptive. We have lost a year, in
6 large part because of the jerking around between counsel. That
7 has to stop. And if Mr. Marino has any further thoughts about
8 changing counsel, the case will proceed with him on a pro se
9 basis. So we are not going to tolerate any more delay."

10 Citing the April 5, 2011 transcript at page 25.

11 Despite that exchange, on January 27, 2012, a lawyer
12 named Lorenzo Lugara sent a letter to Mr. Cavanagh stating that
13 he had been retained to represent defendants Pasquale Marino,
14 Izabela Marino, Salvatore Abbate and Pasquale DaMarino's, Inc,
15 and that Mr. Cavanagh should do no more work on the case.

16 On January 30, 2012, Mr. Cavanagh sent to the Court,
17 to me, executed substitution of attorney forms for all
18 defendants, saying that he would file them later with the
19 clerk's office. That filing never took place. Mr. Cavanagh's
20 letter provided no explanation for the change in counsel or how
21 it complied with my instructions at the April 5, 2011
22 conference that there would be no further substitution of
23 counsel.

24 In a February 27, 2012 letter to the Court,
25 Mr. Cavanagh explained that the defendants Pasquale Marino,

C7K8GENC1

1 Izabela Marino, Salvatore Abbate and Pasquale DaMarino's, Inc.
2 had contacted him and told him that they had retained a new
3 lawyer, Lorenzo Lugara. Once again, the defendants had refused
4 to pay Mr. Cavanagh for the legal services he had rendered.

5 Mr. Cavanagh also asserted in his February 27, 2012
6 letter that a conflict of some sort had arisen in connection
7 with his representation of the defendants. The letter does not
8 make clear what the nature of that conflict is.

9 On February 29, 2012, I received a letter from
10 Mr. Lugara stating that he had been retained by defendants
11 Pasquale Marino, Izabela Marino, Salvatore Abbate and Pasquale
12 DaMarino's, Inc. In his February 29, 2012 letter, Mr. Lugara
13 asked the Court to permit a substitution of counsel yet again.
14 Mr. Lugara stated that the defendants no longer had confidence
15 in Mr. Cavanagh and that Mr. Cavanagh and all the prior lawyers
16 in the matter had taken advantage of the defendants because
17 they only spoke Italian. This assertion appears to be false on
18 its face based on a video submitted by plaintiffs' counsel
19 showing Mr. Marino speaking English quite fluently.

20 In a March 19, 2012 letter, the plaintiffs opposed the
21 substitution of counsel request.

22 In an order dated April 5, 2012, I directed all
23 defendants and Mr. Cavanagh to appear for an April 16, 2012
24 conference to resolve these issues. Neither the defendants nor
25 counsel for the defendants appeared on that date.

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1 On April 24, 2012, I received a letter from yet
2 another attorney, Mr. Risoli, who is here in court this
3 afternoon. In his April 24 letter, Mr. Risoli represented that
4 he had been retained as counsel for defendants, representing I
5 guess the sixth lawyer to have appeared on behalf of the
6 defendants or to seek to appear on behalf of the defendants.

7 On April 27, 2012, I issued an order directing the
8 defendants to show cause by May 4, 2012 why sanctions should
9 not be imposed for their failure to appear at the April 16
10 conference. Defendants did not respond in any fashion to the
11 order to show cause. As a result, on June 1, 2012, I directed
12 the plaintiffs to make a motion for default judgment.
13 Plaintiffs filed that motion on July 3, 2012, and the hearing
14 on that motion was ultimately set for today.

15 Let me also say that Mr. Cavanagh has never moved to
16 be relieved as counsel for defendants, and he remains counsel
17 of record today. Mr. Cavanagh's sending me substitution of
18 counsel forms did not relieve him as counsel of record. Our
19 local rules, and specifically local civil rule 1.4, requires an
20 attorney who is seeking to be relieved to make an application
21 for leave of court. This rule requires that the attorney
22 seeking to withdraw must support his or her application with an
23 affidavit. "Such an order may be granted only upon a showing
24 by affidavit or otherwise of satisfactory reasons for
25 withdrawal or displacement in the posture of the case."

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1 Accordingly, I will require a motion and supporting affidavit
2 here before acting on Mr. Cavanagh's request to withdraw.

3 As to Mr. Lugara's and Mr. Risoli's applications to
4 appear on behalf of defendants, and I might say it's entirely
5 unclear to me who defendants are seeking to have represent them
6 at this point, those requests are denied. I cannot allow this
7 case to be disrupted any further by substitutions of counsel.
8 I made clear more than a year ago, when Mr. Cavanagh came into
9 the case as the third lawyer for defendants, that there would
10 be no further changes of counsel in light of the disruption
11 that the changes in counsel had already caused. And I made
12 clear that defendants' only option going forward would be to
13 proceed pro se in the event that they couldn't proceed with
14 Mr. Cavanagh.

15 I should also say that Mr. Lugara's letter appears to
16 have been sent in bad faith, given that it alleges that
17 defendants' prior attorneys took advantage of them because of
18 their inability to speak English. That appears to have been a
19 false assertion.

20 I have received no satisfactory explanation for the
21 defendants' failure to appear at the April 16, 2012 conference
22 or to respond to the April 27, 2012 order to show cause.

23 (Continued on next page)
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1 THE COURT: (Continued) I received a July 5, 2012
2 letter from Mr. Cavanaugh apologizing for not responding to the
3 Court's prior orders saying that he had not been receiving
4 notifications from Pacer. I can't imagine why this would be
5 so. But assuming arguendo it is so, Mr. Cavanaugh had an
6 obligation to keep track of developments in the case until he
7 was relieved, and he was never relieved as counsel.

8 So we have pending before us a motion for default
9 judgment. I will hear anything that anyone wants to say on the
10 subject, but that is the history here, and it is a sorry tale.
11 I will tell you that I am considering very seriously entering a
12 default judgment against the defendants because of this record.

13 Does anyone wish to speak?

14 MR. WISNIEWSKI: Your Honor, Robert Wisniewski,
15 plaintiff's counsel. We submitted to you several legal
16 authorities which we feel are directly on point. The one that
17 is almost identical, except for the fact that it was the
18 plaintiff, not the defendants, who failed to obey the Court's
19 orders is *Edwards v. Horn*. It is a decision by Magistrate
20 Judge James Cott, about whom you spoke about previously. And
21 the citation is 2012 WL 1292672.

22 THE COURT: What's the name of the case again?

23 MR. WISNIEWSKI: *Edwards v. Horn*. The case was
24 identical. The Court in *Edwards* issued an order for a
25 scheduling conference. Plaintiff, one of the litigants, did

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1 not appear. The Court issued another order rescheduling the
2 conference at which the litigant did not appear. And, finally,
3 the Court issued a report and recommendation which was
4 subsequently accepted by the District Judge Sullivan in which
5 it laid out the case history and on those facts applied the
6 Second Circuit precedent *Link v. Wabash Railroad*, 370 -- I'm
7 sorry, it's a Supreme Court precedent. 370 U.S. 626.

8 THE COURT: I'm sorry?

9 MR. WISNIEWSKI: It's *Link v. Wabash Railroad*
10 *Corporation*, 370 U.S. 626, pinpoint citation 630. It's a 1962
11 case. Also *Shannon v. General Electric Company*, 186 F. 3d 186,
12 and pinpoint citations 193-94.

13 The Court in *Edwards* considered five factors, and
14 you've enumerated in your presentation of the case that it's a
15 sorry case history, the factors such as the duration of the
16 litigant's default, the fact that the litigant did receive
17 notice that sanctions would be considered against him.

18 What I would like to focus on before you today is on
19 the third factor considered by the *Edwards* Court, which is
20 whether the opposing side would be prejudiced by further delay.

21 I should like to add to your statement the fact that
22 we have lost another year since April 2011. After
23 Mr. Cavanaugh was retained, you directed the defendants to
24 respond to all outstanding discovery demands by July. The
25 defendants did not respond to discovery demands by July.

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1 Mr. Cavanaugh advised me that he had had great difficulty
2 obtaining documents from the defendants, and that was the
3 reason for his inability to comply with your discovery order.

4 As a result, on October 12, 2011 I wrote to you a
5 20-page letter detailing the outstanding discovery, written
6 discovery, your Honor. We're talking about responses to
7 interrogatories and document requests. Pursuant to my letter,
8 you sent the case for discovery issues to Magistrate Judge
9 Francis.

10 Now, subsequently, as you know, there were third-party
11 actions instituted by the defendants, and as a result of these
12 third-party actions and the third-party defendants' desire not
13 to spend the money until their motions to dismiss those
14 third-party complaints were resolved, Judge Francis issued an
15 order in which he suspended discovery until you resolved those
16 third-party actions.

17 In January of this year, the circus with the attorneys
18 began again. So, at the very least, your Honor, since January
19 until today we have lost, what, seven months, seven months in
20 this case.

21 Now, I want you to consider the following: This case
22 is brought by waitresses, young waitresses. The witnesses in
23 this case are generally young people, young waitresses. I
24 venture to say that two and a half years after this case began
25 a substantial majority of people that I would want to call as

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1 witnesses have already moved on. They changed their telephone
2 numbers, email addresses, and if you allow this case to
3 continue, your Honor, I would have extreme difficulty locating
4 these witnesses because of the transient nature of restaurant
5 employees.

6 And another situation is this: I now have a class
7 action trial before Judge Glasser which will happen in
8 September or October. The case had been sent to an
9 arbitration -- to a mediation, and if there is no resolution, I
10 have class action trial which will take an enormous amount of
11 time.

12 I also have been advised by my mother that I have to
13 go back to Poland to help her in moving into a nursing home
14 because of her frailty. I'm an only child and she has no other
15 family members, your Honor. I will have to ask for extensions
16 of time in about 50 cases that I'm handling.

17 Your Honor, so realistically if you were to allow this
18 case to continue, I would be able to deal with the outstanding
19 written discovery realistically sometime in October.

20 Another reason is, for example, that the associate who
21 handled this case has left the firm. I have a new associate
22 who is not familiar with this case or with all the discovery
23 issues. So, I want you to consider this very seriously because
24 in this case it's a very important factor.

25 We have lost a year, as you noted, plus seven months,

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1 close to two years on this business with changing attorneys.
2 You've correctly identified the scheme here, Judge. It's
3 retaining new attorneys, OK, having them run up the bill and
4 then refusing to pay, and then moving on and then moving on.

5 And the purpose of sanctions is not only to punish the
6 miscreant, but also to deter such conduct in future cases. And
7 that is a seminal case *National Hockey League v. The Hockey*
8 *Club*, and it is cited in the *Edwards* decision, your Honor.

9 So I want you to consider not only the conduct here
10 but also the deterrent value of your decision to others who
11 will want to deploy the same maneuver as the defendants have
12 done in this case, which is to change attorneys, run up the
13 bill and switching attorneys from one to another and the effect
14 that such a tactic has on the litigants, your Honor.

15 Now, you also have to consider whether lesser
16 sanctions would be appropriate here -- that's in the *Edwards*
17 decision citing the *Shannon v. General Electric* -- but lesser
18 sanctions will not resolve the problem because of the
19 situation, your Honor. It will take me and my personnel days
20 to locate the witnesses we expected to call, OK? We will be --
21 if we are unable to locate these witnesses, we will have six
22 women claiming they were sexually harassed and there will be
23 four or five defendants clearly telling a different story. And
24 because of our inability to find credible witnesses,
25 third-party witnesses, we will be prejudiced by that immensely.

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1 Also, in considering default -- because for all
2 practical purposes the defendants have defaulted here -- you
3 have to consider two things: Excusable neglect, which you
4 clearly didn't find here, and also the substance and merit to
5 the defendant's defenses.

6 As we presented to you in our application, the
7 defendants do not have any defenses to the waitresses' and
8 other employees' claims for wage violations. Their own
9 documents speak for themselves. They're in clear violation of
10 the New York Labor Law, the Fair Labor Standards Act, and the
11 wage orders promulgated under both the state and federal
12 statutes. So the only defenses they have are the claims or the
13 denials by Mr. Marino that he didn't sexually harass these
14 women. OK?

15 Now, I think it is important to mention something
16 here. You uttered the same words to us, to me and Mr. Breud
17 that I heard you say previously; that this case cries out for
18 an early settlement. We did go to a settlement conference,
19 your Honor, when we filed the original action, and because of
20 Mr. Risoli's outrageous statements in his letters, I need to
21 advise you of something, which is very important because these
22 women knew defendant Izabela Marino, they didn't want in public
23 pleadings initially, they didn't want -- and because of the
24 involvement of a rather very well-known actor and the fear that
25 tabloids in New York may pick up the story, they didn't want to

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1 publicize initially that claim.

2 They filed a claim for wage violations, but at the
3 settlement conference we did discuss wage violations and sexual
4 harassment claims, OK? There was a suggestion by Judge Francis
5 that to move on with the mediation perhaps the parties should
6 agree to take the lie detector test. Guess who refused to take
7 the lie detector test, your Honor? And you should consider
8 this when you consider whether the defendants have a substance
9 and merit to their defenses.

10 So, for the reasons that we put forth in our
11 application, and based on the reasons that I have just
12 presented here, plaintiffs do request that you enter default
13 against all defendants.

14 I also wish to remind the Court that the corporation
15 itself, if you relieve Mr. Cavanaugh from representing them,
16 will have automatically defaulted because it will not have been
17 represented by an attorney.

18 So, I think that for all these reasons, you should
19 enter default against all defendants. Thank you.

20 THE COURT: Does anyone else wish to be heard?

21 MR. CAVANAUGH: Yes, your Honor, briefly.

22 Your Honor, without question, there was
23 miscommunication with regards to those court orders, your
24 Honor, and that was with no malice. We had a server issue.
25 The building we were in, we lost all power lines and

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1 information lines. It took us almost a month and a half to get
2 back, and we did -- we lost many different things with regards
3 to our telecommunications, our internet and various things.
4 When we found out and were alerted to this, we immediately
5 notified the Court, apologized to the Court.

6 At this point, your Honor, I would ask that we be
7 allowed to file the papers to be relieved as counsel, but at
8 the same time we were under the belief that Mr. Lugara had
9 filed all these things. Obviously, we were wrong. Mr. Lugara
10 obviously didn't file anything. But subsequently, your Honor,
11 I don't think there is any reason for the defendants here to be
12 sanctioned. If the Court would be so indulgent as to let us
13 file and be relieved as counsel, I think making plaintiffs go
14 on pro se is punishment enough.

15 THE COURT: You mean making defendants go on pro se.

16 MR. CAVANAUGH: Thank you, your Honor, yes.

17 MR. RISOLI: If it please your Honor --

18 THE COURT: Yes, Mr. Risoli, go ahead.

19 MR. RISOLI: Your Honor, the defendants have never
20 asked for a delay in this case. There was a one-year delay
21 built in by four amended complaints which took over a year to
22 answer. The original complaint contained no allegation of
23 sexual harassment. It wasn't until six months later that the
24 first amended complaint alleged that, and by Mr. Wisniewski's
25 statement just now, it seems like it was offered to end this

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1 case by blackmail. They wouldn't bring any sexual harassment
2 Mr. Marino would pay him close to two or \$300,000 for the
3 wage-related claim.

4 When we took over this case, we immediately moved into
5 the criminal case, disposed of it on trial, which it no longer
6 exists, right? We're ready for trial. If he wants to start
7 the trial Monday, I'll start the trial Monday. If he wants to
8 start discovery Monday, I will start EBTs Monday of the
9 plaintiffs, and I will continue on a daily basis until they're
10 done.

11 If he wants EBTs of my guys, the guys I control I will
12 make available to him immediately. The ones I don't control
13 are his option to serve subpoenas on for non-party witnesses.

14 I have an absolute defense in this case, Judge. There
15 is no wage loss in this case when you consider that Mr. Marino
16 paid them a salary, he paid them tips, and he paid them meals.
17 It adds up to more than the minimum wage.

18 I have an absolute defense to this sexual harassment
19 charge. I have over 22 favorable declarations from -- ten of
20 them probably are from independent witnesses who no longer work
21 at the restaurant who have no reason to give me a declaration,
22 who have no reason to say what they're saying in his defense.

23 Now, as far as not appearing before your Honor, he had
24 absolutely no notice to appear. Mr. Marino, although he speaks
25 English, has a little trouble understanding. We had to get an

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1 Italian interpreter in the criminal trial.

2 Mr. Cavanaugh never advised him of the appearance. He
3 never advised him of the show cause order. I wish to bring to
4 your Honor's attention the case of *Cody v. Mello*, 59 Fed.3d 13
5 where in that Court, that Court offered an alternate default
6 against the plaintiff in that case, and it was reversed by the
7 Court of Appeals, Federal Court of Appeals on the basis that
8 the defendants had no knowledge of the court appearance, and
9 their non-appearance was not willful.

10 The Court stated in that case in the last sentence
11 that the "extreme sanction of a default judgment must remain a
12 weapon of last resort rather than first resort."

13 Your Honor, all I could say is we are staying with the
14 defendant now. There were reasons why the three defendants,
15 the attorneys left them. We're staying with him. I'm here for
16 the trial. I'm 78-years-old, and I promise you before I pass
17 away, I'll finish this trial. There's no delay being asked for
18 by the defendants, and the default judgment would be extremely
19 prejudiced in this case. Thank you, your Honor.

20 MR. WISNIEWSKI: Your Honor, may I be heard?

21 THE COURT: Sure.

22 MR. WISNIEWSKI: Yes. I'll be brief.

23 THE COURT: Anything else from defendants before I
24 hear from Mr. Wisniewski? Mr. Cavanaugh, did you want to say
25 something else?

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1 MR. CAVANAUGH: Your Honor, only briefly in that I
2 agree with Mr. Rispoli. I never did notify the defendants, my
3 clients, because at that point I was actually told to have no
4 contact with them, so I did not notify them and was under the
5 belief that Mr. Lugara was representing them, but I would agree
6 with Mr. Rispoli that the defendants should not be sanctioned
7 to that extent, your Honor. Thank you.

8 THE COURT: So what happened to Mr. Lugara? Because I
9 had received several pieces of correspondence from him.

10 MR. RISOLI: Your Honor, Mr. Lugara this morning sent
11 me an email that says that he couldn't attend this appearance
12 today because he's the best man in a wedding in Pennsylvania.
13 I would like to submit it to the Court. I have a copy for
14 Mr. Wisniewski.

15 But further I would like to state to the Court I have
16 all the defendants present here except one, your Honor, who is
17 out of the country.

18 THE COURT: And what do you say, Mr. Risoli -- and,
19 again, I'm granting you the indulgence of hearing you because,
20 as I've indicated, I'm not going to permit the defendants to
21 add another lawyer into the case, but what do you say to the
22 argument that I told the defendants back in April of 2011 that
23 there was to be no more substitution of counsel, and that if
24 they persisted in this tactic of retaining lawyers and then not
25 paying them, they were going to be required to proceed pro se.

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1 What do you say to that?

2 MR. RISOLI: Your Honor, as I read the minutes -- I
3 have them here. As I read the minutes of that hearing, you
4 said, "if he retains new counsel or discharges counsel." You
5 said if he does that, then you are going to make him proceed
6 pro se, which means your Honor would tolerate no further delay
7 in the case. He would go on by himself.

8 He is not asking for any delay, Judge. I'm not asking
9 for any delay. I'm ready to go. He's got attorneys that are
10 ready to go immediately at your Honor's discretion.

11 THE COURT: Well, I have to tell you that when
12 Mr. Cavanaugh came into the case in April of 2011, and he told
13 me he was ready to go, he told me there would be no delay, he
14 told me that his clients were interested in a rapid resolution
15 of the matter, etc., etc., and that's not what happened.
16 Instead, what happened is a repeat of what had happened with
17 other lawyers that had been involved in the case previously.

18 I do have to take very seriously what Mr. Wisniewski
19 has said about the prejudice that his clients have suffered as
20 a result of the passage of time. I have to consider the fact
21 that I was very clear back in April of 2011 that I would not
22 tolerate any more of this behavior. It continued nonetheless.

23 I have to consider the failure to appear at the
24 conference on April 16, the failure to respond to the order to
25 show cause. I have been told by Mr. Cavanaugh this afternoon

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1 that he had some problems with a server, but obviously that
2 doesn't excuse an attorney from keeping track of what's going
3 on with the docket of cases of which he is still counsel of
4 record. So, there isn't any justifiable excuse that I can see
5 on this record for what's happened. That's where we are.

6 Mr. Wisniewski, anything else you want to say?

7 MR. WISNIEWSKI: Yes, your Honor, I'll be very brief.
8 Mr. Risoli made assertions basically without any legal support
9 that Mr. Marino has defenses to wage and hour violations.
10 We've submitted to you a substantial memorandum of law on that
11 issue and we submitted to you the pay stubs. If you read the
12 memorandum of law, all of the authorities, and you review the
13 pay stubs, on their face they're violations of law.

14 For example, initially he pays waitresses \$10 per day,
15 per day, when they've worked, eight, ten, 12 hours, OK? That's
16 one dollar per hour. Even assuming a tip credit, the guy is
17 short three or four dollars per hour. He doesn't pay them
18 overtime. When he gets sued initially, your Honor, he
19 switches. He pays them the alleged tip credit minimum wage of
20 \$4.60, but as you will see from the pay stubs, if people work
21 over 40 hours, he still pays them at the regular rate, not the
22 overtime rate. Your Honor, these are Exhibits 12 to 15 of our
23 initial application. All you have to do is look at the pay
24 stubs. So Mr. Risoli's assertions are simply incorrect.

25 Secondly, Mr. Risoli makes very strong accusations

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1 against me and my clients and also against Mr. Cavanaugh. For
2 example, in his letter he accuses my clients of conspiring and
3 for me to be part of that conspiracy that somehow we are
4 blackmailing him. I want to make it plain to you, your Honor,
5 because the plaintiffs knew the defendant Izabela Marino, who
6 is married to Mr. Marino right there, OK, they didn't want her
7 to be hurt so much because they were friendly with her.
8 Because when the case was not resolved through settlement, we
9 amended our pleadings as a right. That was no blackmail. It
10 was just a sensitivity to one of the defendants. We don't care
11 about Mr. Marino clearly, but they cared about Izabela Marino,
12 a young woman who is married to Mr. Marino, and with whom she
13 has a two- or three-year-old child. That was the reason behind
14 it, not blackmail. Mr. Risoli is very liberal of accusing
15 other attorneys of criminal conduct here, including accusing
16 Mr. Cavanaugh of allegedly running some money laundering
17 scheme.

18 Now, Mr. Risoli's claim that the defendant didn't know
19 is absurd. Three lawyers knew or should have known. Even if
20 Mr. Cavanaugh had a power outage for several months, and I'm
21 sorry to say, but Mr. Cavanaugh has not submitted any proof of
22 such a power outage, OK, then you have Lugara who in late
23 January or early February writes to you and he says I'm
24 representing these people. What, Lugara doesn't check the
25 docket?

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1 We also have Mr. Risoli who files a notice of
2 appearance on April 24. Why? He doesn't check the docket? He
3 doesn't check the docket that several days later you issue
4 another order? Well, you have to say that clearly the
5 defendants knew, the defendants knew through their legal
6 representatives, their lawyers.

7 As I put in my reply memorandum to you, Judge, if
8 there is an issue, maybe the proper venue is the Supreme Court
9 next door for a malpractice lawsuit against Mr. Risoli and
10 Mr. Lugara, OK? Maybe that is the proper solution. But
11 clearly you shouldn't punish plaintiffs in this case, and
12 certainly since you've already made the decision not to allow
13 Mr. Risoli to represent, because this will be a circus.
14 Mr. Risoli says he is ready to proceed. But I am not, your
15 Honor. As my 20-page letter to you details, there's
16 substantial deficiencies in the defendant's discovery
17 production. The deficiencies that were the result of the
18 contumacious conduct because they were told to produce
19 everything, and they didn't. OK? That has not been resolved,
20 so we cannot start with depositions on Monday, your Honor. It
21 will take us months to start depositions. It will take me days
22 to locate people, people who two years ago or a year ago were
23 available. Now I'll be looking for them.

24 Mr. Risoli makes this bold statement that he has 22
25 declarations. Where are they? They should have submitted them

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1 as part of their application here. OK?

2 Your Honor, you have been very generous with the
3 defendants here, and the time has come to pull down the curtain
4 on this farce which has been the defendant's conduct. Thank
5 you very much.

6 MR. RISOLI: Your Honor, he's given you about 15
7 reasons why he can't proceed in this case; not why the
8 defendants can't proceed. He's telling you he lost these
9 people.

10 Your Honor, I have a tape of Mr. Wisniewski
11 interviewing somebody trying to get her to join into this suit.
12 No matter how many times she told him that Mr. Marino was not
13 guilty of any wage violation was not guilty of any sexual
14 violation, he continued for over 50 pages of transcript to try
15 to convince her to join this suit. This case was produced and
16 directed by Mr. Wisniewski, right? I sent a letter to your
17 Honor asking you to consider having him appear as a witness for
18 the defense in this case on the grounds that there was no
19 sexual harassment allegations originally in this case, right?

20 Judge, there's no delay here. There's no delay.
21 These people were paid the proper wage. There was no sexual
22 harassment.

23 Let me say as a last thing that Mr. Marino has been in
24 business for 16 years in this restaurant. He's gone through
25 how many thousands of waitresses and wages, and this is the

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1 first time this has ever come up. He has never been guilty or
2 never been accused of anything like this, and this is the first
3 time. He has a right to defend himself, your Honor, and prove
4 that these allegations are false, both the wage allegations and
5 the sexual harassment.

6 The last thing I want to say, Judge, before I sit
7 down, I see on the electronic filing now that there's four
8 additional names listed who I don't know who they are, right?
9 Are we to expect another amended complaint? I don't understand
10 what their names are doing there, but I don't know if we are to
11 expect another amended complaint. We've now answered the four
12 amended complaints which were over a thousand pages.

13 Judge, we need a trial in this case. We're ready to
14 go to trial Monday. If he needs time to find his people, let
15 him find his people. Let's go to trial and dispose of this
16 case on the merits the way every case should be disposed of.
17 Thank you, your Honor.

18 THE COURT: All right. I'm going to --

19 MR. WISNIEWSKI: Your Honor, I have to address just
20 two issues. OK? I have to say, Mr. Marino had dispatched his
21 mistress, Ms. Natalia Odegova to tape me. OK? Fine. There
22 were two lawyers who reviewed those tapes somehow and while
23 they were alluded to previously, OK, certainly, certainly if
24 they had been so explosive, as Mr. Risoli says, there would
25 have been other proceedings.

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1 But I wish to tell you, OK, if Mr. Risoli since he
2 raised this issue, there will be testimony that Ms. Odegova was
3 his mistress. It will be testimony by her roommate who saw
4 Ms. Odegova and Mr. Marino in the room next door. Perhaps
5 Mr. Risoli doesn't know this.

6 Secondly, clearly, Mr. Risoli doesn't understand wage
7 and hour cases. The reason there have been people here who
8 aren't listed in the caption is because they filed consents to
9 joinder pursuant to a distribution of a notice of pendency
10 under the Fair Labor Standards Act. The reason there have been
11 amendments is because other people have joined. Ms. Lisovskaya
12 has joined. Ms. Synyuk has joined. And Mr. Moin Uddin has
13 joined.

14 Your Honor, we've given you reasons why you should
15 pull down the curtain on this farce, and it will be a farce, it
16 does seem to me, if you were to reconsider your decision to not
17 allow Mr. Risoli to represent Mr. Marino. But this is what you
18 are going to expect, OK? Instead of focusing on wage
19 violations and the allegations, there will be allegations about
20 Cavanaugh running a drug operation and me engaging in
21 conspiracy -- boldfaced allegations unsupported by anything.
22 And I would like you to consider sanctions against Mr. Risoli
23 for making such statements in open court.

24 THE COURT: All right. I've heard enough.

25 MR. RISOLI: Your Honor, one last thing. There should

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1 be --

2 THE COURT: No. I've heard enough.

3 MR. RISOLI: There should be a deadline to add people
4 to these cases.

5 THE COURT: I said I've heard enough.

6 MR. RISOLI: OK.

7 THE COURT: The lawyers will give to the court
8 reporter the correct spellings of all the names that have been
9 mentioned in today's proceedings. I'll take under advisement
10 the notice for default judgment.

11 MR. WISNIEWSKI: Thank you.

12 (Adjourned)